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Appl. No.: 10/812,451
Amdt. Dated February 27, 2007
Reply to Office Action of December 13, 2006

REMARKS/ARGUMENTS

Claims 1-27 are pending. Claims 22, 24, and 26 were rejected under 35 U.S.C. 112, second paragraph, for indefiniteness. Claims 1-10, 14-17, 19-21, and 24 were rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 4,018,904 to Muraoka. Claim 1 was rejected as anticipated by U.S. Patent No. 2,766,796 to Tupper. Claims 11, 12, 13, 18, and 27 were rejected under 35 U.S.C. 103(a) as being unpatentable over Muraoka in view of U.S. Patent No. 3,227,273 to Syverson et al. Claims 22, 23, 25, and 27 were rejected as unpatentable over Muraoka. Claim 26 was rejected as unpatentable over Muraoka in view of U.S. Patent No. 4,134,492 to Lucas.

The Indefiniteness Rejections

Claim 22 was deemed to be indefinite because the Office Action said it is unclear how the skirt can extend both outwardly and toward itself. Applicant has amended the claim to clarify that the skirt flares radially outwardly *in a direction* toward a lower end of the skirt. In other words, along the direction toward the skirt's lower end, the skirt is increasing in radius. It is believed the amended claim is clear and definite.

Claim 24 was rejected because the recitation "at least partway" was deemed to be unclear. This is not unclear. "At least partway" clearly means that the shrink film can extend either all the way along the length of the primary container or only partway along the length of the primary container. While "at least partway" may be broad in the sense that it is not limited to any particular degree of extension along the length of the primary container, it is not unclear (see MPEP § 2173.04). A person of ordinary skill in the art would have no difficulty determining the scope and meaning of this limitation. Accordingly, the rejection should be withdrawn.

Claim 26 was rejected because it was deemed to be unclear how the shrink band can be wrapped about the top ends of the cup holder and primary container to seal the package, and yet the cup holder can remain open at the top end. This is not unclear. Claim 26 is directed to an

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embodiment such as shown in FIGS. 9-11. In such an embodiment, the shrink band indeed is wrapped about the top ends of the cup holder and primary container, but just does not extend fully across the opening of the cup holder—thus the cup holder remains open so that the packages can be nested as shown in FIG. 11. It is submitted that Claim 26 is sufficiently clear, and that the rejection should be withdrawn.

Rejections Under Section 102

Claims 1-10, 14-17, 19-21, and 24 were rejected as being anticipated by Muraoka.

While the Office Action asserted that Muraoka's inner and outer receptacles are capable of being reversibly nested, Applicant notes that Muraoka specifically structured the receptacles such that it is not easy to withdraw the inner receptacle from the outer receptacle (col. 3, lines 2-10). Thus, the intention is that the receptacles should not be separated, although presumably it is possible to separate them if one were to pull hard enough. Nevertheless, it is fair to say that Muraoka's teachings would not have led a person of ordinary skill in the art toward a package in which nested inner and outer receptacles are readily separated for reversibly nesting them. There is simply nothing in Muraoka that suggests such an objective would be desirable.

Claim 1 has been amended to explicitly recite "the cup holder being readily removable from the primary container such that the package can be converted into a serving configuration in which the primary container is nested inside the cup holder". It is submitted that Muraoka's inner receptacle 3 is not *readily removable* from the outer receptacle 2.

Claim 1 has been further amended to include the "complementary locking features on the cup holder and primary container for locking the primary container into the cup holder in the serving configuration of the package", which was present in original Claim 2. The Office Action asserted that Muraoka's items 16, 17 on the inner receptacle and items 8, 10 on the outer receptacle correspond to the locking feature limitation. However, Muraoka's package would not work in this way. This can be seen by recognizing that the inner receptacle 3 at its lower end has

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an undulating or fluted configuration as shown in FIG. 2, and therefore even if the inner receptacle were removed from the outer receptacle and the receptacles were reversibly nested, the bottom of the outer receptacle would not be able to fit into the lower end of the inner receptacle because the flutes would prevent it from doing so. A large fraction of the outer receptacle would be above the top of the inner receptacle. As a result, the ribs 16, 17 on the inner receptacle would not even be in engagement with the outer receptacle, and likewise the tapered portions 8, 10 on the outer receptacle would not be in engagement with the inner receptacle. Thus, contrary to the Office Action, Muraoka does not disclose or suggest "complementary locking features on the cup holder and primary container for locking the primary container into the cup holder in the serving configuration of the package".

For at least these reasons, Muraoka does not anticipate or render obvious the package defined in Claim 1.

Dependent Claims 2-10, 14-17, 19-21, and 24 are patentable over Muraoka for at least the same reasons applicable to Claim 1. Additionally, a number of features in these claims are not disclosed or suggested by Muraoka or the other cited references. Some of these features are addressed in the following section on the § 103 rejections.

Claim 1 was also rejected as being anticipated by Tupper. Claim 1 has been amended to recite that in the serving configuration the primary container is nested inside the cup holder "with a side wall of the cup holder surrounding a side wall of the primary container so as to form a double-walled structure thermally isolating contents of the primary container from a user's hand gripped about said double-walled structure". The closure 10 of Tupper's container does not meet this recitation because in the "serving configuration" (FIG. 5) there is no double-walled structure that a user's hand grips. The closure 10 merely serves as a coaster (col. 2, lines 61-66). With this amendment, the rejection based on Tupper has been overcome.

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Rejections Under Section 103

Claims 11, 12, 13, 18, and 27 were rejected as being unpatentable over Muraoka in view of Syverson et al. Claims 22, 23, 25, and 27 were rejected as unpatentable over Muraoka. Claim 26 was rejected as unpatentable over Muraoka in view of U.S. Patent No. 4,134,492 to Lucas.

As a first point, since the amendments to Claim 1 overcome the rejection of Claim 1 based on Muraoka, and since Syverson and Lucas do not contain any teachings that would have led one to modify Muraoka's container to include the limitations of Claim 1 lacking in Muraoka as already pointed out, any combination of Muraoka and Syverson or Lucas would not have suggested the package of Claim 1. Since Claims 11, 12, 13, 18, 22, 23, 25, 26, and 27 (as now amended) depend from Claim 1, then these claims are patentable for at least the same reasons applicable to Claim 1.

Furthermore, the cited references fail to teach other features of the dependent claims in combination with the features of Claim 1. For example, Claim 26 recites "a food product contained in the primary container in the packaged configuration, and a shrink band wrapped about the top ends of the cup holder and primary container to seal the package and hold the primary container and cup holder together, the shrink band terminating at an upper edge proximate the flange at the top end such that the cup holder remains open at the top end, permitting multiple ones of the packages to be nested inside one another in the packaged configuration." As previously noted, Claim 26 is directed to an embodiment such as shown in FIGS. 9-11 of the present application.

Lucas does not remotely suggest modifying Muraoka's container to include a food product contained in the primary container or to include a shrink band arranged as claimed. Regarding the food product, Muraoka teaches putting the food product in the inner receptacle 3 in the packaged configuration. There is no suggestion of putting the food product instead in the outer receptacle 2. Lucas discloses only a single receptacle or cup 10. Lucas's lining 14 serves to seal a food product 16 in the cup 10. Thus, even if Muraoka and Lucas were somehow

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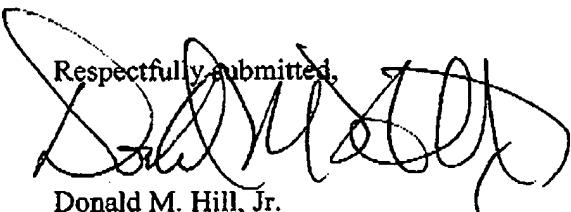
combined, they would not have suggested putting the food product in the primary container—if anything, Lucas would lead one to put the food product in the cup holder so that his lining 14 could then be used to seal the food product.

In the package of Claim 26, the food product is contained in the primary container, and thus is covered by the cup holder nested in the primary container. It is not clear how Lucas's lining could even be applied to such a container. Therefore, it is submitted that the package of Claim 26 is not suggested by Muraoka and Lucas.

Conclusion

Based on the above amendments and remarks, Applicant respectfully submits that all pending claims are patentable and the application is in condition for allowance.

It is not believed that extensions of time or fees for net addition of claims are required, beyond those that may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 CFR § 1.136(a), and any fee required therefor (including fees for net addition of claims) is hereby authorized to be charged to Deposit Account No. 16-0605.

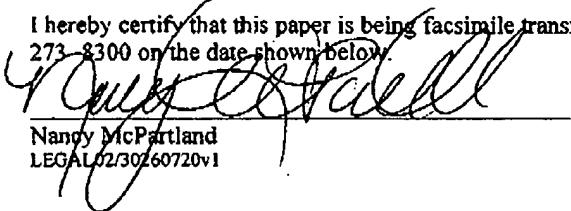
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